IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6009 of 1998

to

FIRST APPEALNo 6035 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

RAMANBHAI CHATURBHAI

Appearance:

1. First Appeal No. 6009 of 1998

GOVERNMENT PLEADER for Petitioners No. 1-2

MR JAYESH M PATEL for Respondent No. 1

..... for Respondents No. 2-4

CORAM : MR.JUSTICE B.C.PATEL
and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 21/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE SHARAD D.DAVE)

1. The State, being aggrieved by the award made by the Reference Court (2nd Extra Assistant Judge, Kheda at Nadiad) in L.A.R.Nos. 1256/94 to 1271/94, 1454/94 to 1455/94 and 1465/94 to 1473/94 on 20.2.98 awarding compensation to the claimants at the rate of Rs.1600/per Are and other statutory benefits, has preferred these First Appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) read with Section 96 of the Civil Procedure Code.

2. The brief facts are as follows :
The Executive Engineer, Narmada Project, made a proposal for acquisition of agricultural lands of village Salun, Taluka : Thasra, District : Kheda for the purpose of Narmada Project (Main Canal). The Notifications under Sec. 4 of the Act was published in May, 1990 and July, 1990. Awards were passed by the Land Acquisition Officer on different dates awarding Rs.2.40ps. per sq.mtr. for irrigated lands and Rs.1.60ps. per sq.mtr. for non-irrigated lands. The claimants, being aggrieved by the said awards, sought reference under Sec. 18 of the Act and the Reference Court, taking into consideration the material placed before it, awarded Rs. 16/- per sq.mtr. It is against this award the State has preferred these First Appeals.

3. There is no dispute that the Special Land Acquisition Officer followed the procedure contained under the Act for acquiring the lands and, therefore, procedural aspect is not required to be discussed. Suffice it to say that the Special Land Acquisition Officer determined the market price @ Rs.2.40ps. per sq.mtr. for irrigated lands and Rs.1.60ps. per sq.mtr. for non-irrigated lands, while the claimants claimed Rs.10,000/- Per Are and also sought other benefits. The Reference Court, on appreciation of evidence, held that the claimants are entitled to get the market price Rs.1600/- per Are and other statutory benefits.

4. The Record and Proceedings have been produced by Mr. A.J.Patel, learned Counsel appearing for the claimants. The lands are situated in Taluka Thasra of Kheda District. The lands situated at village Lasundra which is at a distance of 2km. on the western side to

the village Salun were acquired for which notifications under Section 4 of the Act were issued in the months of May, June, July, August, September and December, 1990. In all, there were 202 Reference Cases filed for the lands acquired at village Lasundra. Ultimately, the Reference Court awarded Rs.19/- per sq.mtr. on appreciation of evidence.

5. The lands situated at the village Sandheli, Taluka Thasara, District Kheda were acquired under award. Notifications under Section 4 of the Act were issued in the years 1989-90 and 1990-91 wherein ultimately, the Reference Court determined the market price at the rate of Rs.18/- per sq.mtr. The village Sandheli is the adjoining village.

6. The lands situated at the village Dahiap were acquired for which the notifications under Section 4 of the Act, were published in the 1989-90 and ultimately the Reference Court determined the market price at the rate of Rs.16/per sq.mtr. This village is at a distance of 5 to 6 km. from the village Sandheli which the adjoining village to Salun.

7. The Reference Court in para-10 observed that the learned Government Pleader has not examined any witness before the Court and, therefore, the Reference Court was required to decide the matter on the basis of evidence produced by the claimants. The claimants have produced Village Form No. 7/12 for the years 1989-90 vide exhibits 15 to 36. There is a certified copy of detailed schedule issued by the expert for produce, cost and net profit. Before the Reference Court, voluminous evidence was produced for supporting the say of the claimants such as price list issued by Kapadvanj Cooperative Society, details of kharif-crops, demand registers for Kharif-Crop, demand register for "Ravi" season etc. All these documents were for the respective years. A certified copy of deposition of an expert, Mohanlal Parsottambhai, who was examined on behalf of the State Government in Land Acquisition Reference No.356 of 1994 for the agricultural lands of village Antroli was also produced. The detailed data prepared by an expert was also produced vide exhibit 12. On the basis of documentary evidence, it was submitted that the oral evidence gets complete support and, therefore, this Court should not interfere with the findings recorded by the Reference Court.

8. The Reference Court, on appreciation of evidence, observed that in view of the expert evidence, it is clear that in Thasra Taluka of Kheda District, most of the farmers were cultivating crops of tobacco, millet, paddy

and wheat etc.. The Reference Court has taken into consideration the documents in the form of certified copies given by the Irrigation Department and Kheda District Panchayat establishment is providing irrigation facilities. With the help of irrigation, the claimants were cultivating crops of paddy, millet and other crops. In "Ravi" season, they used to take crops of wheat, cotton, tobacco and other crops. On the basis of the evidence, the Reference Court arrived at the conclusion that minimum two crops were taken in a year. Nothing is pointed out from the record to show that findings of facts are not based on record.

9. In para nos. 18 & 19 of the judgment, the Court examined as to what the cultivators were cultivating and what would be the income. In para nos. 20, 21 & 22 of the judgment, the Reference Court considered the different types of crops being cultivated. There is similar nature of evidence to indicate as to what would be the yield per hectare. On the basis of evidence and taking an average, the Reference Court awarded Rs.16/per sq.mtr. for the lands situated at village Salun.

10. Mr. Patel, learned Counsel, submitted that for village Lasundra, which is situated on the western side at a distance of 2.5 km. of village Salun, 202 reference cases were before the Reference Court. He submitted that the lands are of similar nature and there is no dispute with the same. In view of the fertility, facilities available and evidence which is produced on record of the case, Mr. Patel, learned Counsel, submitted that the decision of Reference Court for acquisition of the land situated at village Lasundra should be taken as a strong piece of evidence to support the say of the claimants when the lands are situated to the adjacent village and on behalf of the State, there is no evidence to show that the lands situated at the village are inferior, that is to say are not of similar nature and poor in quality. In view of the documentary evidence and map, it is clear that the village Salun is adjoining to the villages; Lasundra, Sandheli and Dahiap. In these contiguous villages lands were acquired. The State has not pointed out by leading evidence that the lands of this village are inferior in fertility or not comparable with the lands of adjoining villages. It is difficult to reject the evidence of the claimants about distance. The Apex Court in the case of THAKARSIBHAI DEVJIBHAI & OTHERS vs. EXECUTIVE ENGINEER, GUJARAT & OTHERS reported in 2001 A.I.R. SCW 2417 pointed out that "So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that

quality and potentiality of such land is inferior. However, distance between the land under Exh.16 and the present land even if they are 5kms. apart would not be relevant, the relevancy could be, their distance from the Viramgam town." The Court further pointed out that "No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs.10/per sq.mtr. cannot be sustained."

11. In our view, when the judgments delivered by the Reference Court for the lands situated at villages Lasundra, has been confirmed by the Division Bench of this Court, and for the lands situated at villages Sandheli & Dahiap have been confirmed by this Bench, there is nothing as to why interference of this Court is required. So far as the lands situated at village Lasundara are concerned, First Appeal Nos. 4300 to 4501 of 1998 preferred by State were dismissed by the Division Bench (Coram : M.R.Calla, & R.P.Dholakia, JJ.) on 07/05/1999 confirming the award made by the Reference Court determining the market price at the rate of Rs.19/per sq.mtr. Special Leave Petition preferred against the said decision has been dismissed as there was delay. That apart, the Judgment of the Division Bench if perused, it becomes clear that on basis of documentary and oral evidence, the Court has dismissed the appeals.

12. So far as agricultural lands of Sandheli are concerned, notifications under Section 4 of the Act were published in 1989, 1990 and 1991. The Reference Court awarded Rs.18/- per sq.mtr. The State preferred appeals before this Court being First Appeal Nos. 1432 of 1999 to 1493 of 1999. Considering the evidence placed on record and decisions pertaining to acquisition of lands of adjoining villages, this Division Bench dismissed the appeals and confirmed the award made by the Reference Court.

13. So far as agricultural lands of Dahiap are concerned, the State preferred appeals before this Court being First Appeal No. 1154 of 1999 to 1267 of 1999. This Division Bench dismissed the appeals and confirmed the award made by the Reference Court, after taking into consideration the evidence placed on record and the decisions of adjoining villages.

14. Thus, it is clear that the lands are situated to the adjoining village Sandheli and in absence of any evidence led by the State to indicate that the lands are inferior, it is not possible to interfere with the findings recorded by the Reference Court. Therefore, these appeals are required to be dismissed and stand

dismissed with costs.

15. It goes without saying all the statutory benefits, which are available under the Act to the claimants, must be made available to them. Mr. A.J.Patel, learned advocate appearing for the claimants, submitted that in view of pronouncement of judgment by the Apex Court in case SUNDER vs. UNION OF INDIA reported in 2001 AIR SCW 3692 (2001)SOL Case No.551), the claimants are also entitled to interest on solatium. The Apex Court in the said judgment pointed out as under:

> "27. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)
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> `Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'
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> 28. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

16. The State is directed to make payment of 50% amount within a period of three months from today and to make payment of the remaining 50% amount within a period of three months thereafter to the claimants after proper verification.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

Srilatha